

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
VoiceStream Wireless Petition for)	
Waiver of Section 64.402 of the)	WT Docket No. 01-333
Commission's Rules)	
)	
)	

**COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION**

The Cellular Telecommunications & Internet Association ("CTIA"),¹ pursuant to the Public Notice released December 11, 2001,² hereby submits its comments in support of the waiver request filed by VoiceStream Wireless Corporation ("VoiceStream").³ VoiceStream has requested a waiver of section 64.402 of the Commission's rules to allow it to provide priority access service ("PAS") to the National Communications System ("NCS").

VoiceStream's request satisfies the criteria for waivers under Section 1.925 of the Commission's rules. Consistent with the NCS's determination that "any wireless priority

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² *Public Notice*, "Wireless Telecommunications Bureau Seeks Comment on a Petition for Waiver of the Commission's Part 64 Priority Access Service Rules, WT Docket No. 01-333, DA 01-2883 (rel. Dec. 11, 2001).

³ VoiceStream Wireless' Petition for Waiver of the Commission's Part 64 Priority Access Service Rules, WT Docket No. 01-333 (Nov. 28, 2001) ("VoiceStream Petition").

access service that can be currently offered must utilize technology that does not permit full compliance with the existing Commission rules,” the Commission should grant VoiceStream’s request for a waiver to provide immediate PAS.⁴ Furthermore, the Commission should use this waiver request as an opportunity to establish that an agreement entered into between NCS and any licensed Commercial Mobile Radio Service (“CMRS”) carrier for the provision of PAS is *prima facie* in the public interest and does not require an additional waiver from the Commission.

DISCUSSION

The Commission adopted PAS rules for CMRS carriers based on the specific recommendations of the NCS, which is the expert agency with respect to the federal government’s requirements for priority access.⁵ The Commission’s rules allow authorized national security and emergency preparedness (“NSEP”) users to gain access to the next available wireless channel without preempting calls already in progress, and establish five distinct levels of priority access based on the definitions proposed by NCS. CMRS providers that choose to offer PAS must follow the policies and procedures set

⁴ See National Communications System’s Statement in Support of Verizon Wireless’ Petition for Waiver, WT Docket No. 01-333 (Nov. 2, 2001), Declaration of Mr. Brenton C. Greene at 1-2. See also, National Communications System’s Statement in Support of VoiceStream Wireless’ Petition for Waiver, WT Docket No. 01-333 (Dec. 6, 2001), Declaration of Carl W. Smith (“NCS’s Statement”) (stating that “[u]ntil the eMLPP handsets are available, VoiceStream will be unable to fully comply with PAS rules”) at 2.

⁵ *Second Report and Order*, WT Docket No. 96-86 (2000) (“PAS Order”) at ¶¶

forth in Part 64, Appendix B.⁶ VoiceStream has filed a petition for waiver of Section 64.402 of the Commission's rules to allow it to voluntarily offer PAS on an expedited basis (within 60 days) for the Washington, D.C. and New York City metropolitan areas and by the end of 2002 on a nationwide basis.⁷

VoiceStream's request for a waiver to deploy a technical solution, referred to as the "Enhanced Multi-Level Precedence and Preemption" ("eMLPP"), which provides queuing of the priority call for the next available resource when radio or network resources are not available, clearly satisfies the Commission's waiver standard.⁸ As VoiceStream explains in its petition, its solution does not meet all of the requirements of Section 64.402 because the technology is not yet available in wireless handsets.⁹

In addition, VoiceStream has asked the Commission to grant protection from liability so long as it provides Immediate Service PAS "to authorized NSEP users pursuant to contract with the National Communications System or its service integrator, or otherwise

⁶ 47 C.F.R. § 64.402 and Part 64, Appendix B.

⁷ VoiceStream has been working with the Office of Manager of the NCS and its service integrator, DynCorp to determine what PAS capabilities could be provided in GSM networks on an expedited basis.

⁸ See VoiceStream Petition at 4-5.

⁹ See VoiceStream Petition at 4 (explaining that since eMLPP-capable mobiles, handsets equipped with appropriate signaling capabilities and menu options, are not commercially available at this time, VoiceStream will not be able to allow users to select call precedence at call invocation as required under the PAS rules).

approved by the National Communications System.”¹⁰ CTIA agrees with VoiceStream that the Commission should extend the protection of the PAS Order to limit the liability of any carrier providing PAS service pursuant to an agreement with NCS.¹¹

The original NCS petition set forth very specific requirements for wireless PAS; and the Commission relied on the NCS requirements when it adopted the PAS rules for CMRS carriers just last year. Whatever plans NCS may have had for the phased-in deployment of wireless PAS service were dramatically changed by the September 11, 2001, terrorist attacks, and the Nation’s immediate needs for this service. NCS is clearly the expert agency with regard to NSEP user needs, and the FCC should defer to their judgment concerning the immediate and subsequent PAS requirements in the new environment. Accordingly, the Commission should use this waiver request as an opportunity to establish that an agreement entered into between NCS and any licensed Commercial Mobile Radio Service (“CMRS”) carrier for the provision of PAS is *prima facie* in the public interest and does not require an additional waiver from the Commission.¹²

¹⁰ The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010; Establishment of Rules and Requirements for Priority Access Service, *Second Report and Order*, WT Docket No. 96-86 (2000) (“PAS Order”) at ¶¶22-24.

¹¹ See VoiceStream Petition at 4.

¹² VoiceStream, in its petition, urges the Commission to accept CTIA’s suggestion to “rule more generally that an agreement between NCS and any licensed CMRS operator for the provision of PAS is *prima facie* lawful and does not require an additional waiver from the Commission.” VoiceStream Petition at 6, n. 10.

CONCLUSION

For the reasons set forth above, the Commission should grant VoiceStream's waiver request, and in addition, establish that an agreement entered into between NCS and any licensed Commercial Mobile Radio Service ("CMRS") carrier for the provision of PAS is *prima facie* in the public interest and does not require an additional waiver from the Commission.

Respectfully submitted,

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